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SAMMY RODGERS AND ALVERY NEACE
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 *IN RE: ZOOM VIDEO COMMUNICATIONS*
13 *INC. PRIVACY LITIGATION,*

14 This Document Relates To:
15 All Actions

Master Case No. 3:20-cv-02155-LB

**MOTION FOR ATTORNEYS' FEES
AND INCENTIVE AWARD FOR
OBJECTORS SAMMY RODGERS AND
ALVERY NEACE PURSUANT TO FED.
R. Cv. P. 23(h).**

17 Hon. Laurel Beeler
18 Courtroom: B
19 Date: February 2, 2023
Time: 9:30 a.m.

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD: PLEASE TAKE NOTICE
that on February 2, 2023, at 9:30 a.m. or as soon thereafter as the matter may be heard before the
Honorable Magistrate Judge Laurel Beeler, of the United States District Court for the Northern
District of California, San Francisco Division, located at Courtroom B, 15th floor, 450 Golden Gate
Avenue, San Francisco, California, 94102, objectors Sammy Rodgers and Alvery Neace will and
hereby do move the Court for an award of attorneys' fees in the amount of \$47,395, reimbursement
of costs in the amount of \$505, and an incentive award to Sammy Rodgers and Alvery Neace in the
amount of \$1,000 each pursuant to Fed. R. Civ. P. 23(h).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As this Court is aware, on December 16, 2022, it entered an Order at Entry 261 approving the parties' joint unopposed motion for approval of settlements with objector-appellants and Amendment of the Settlement Agreement.

Since Objector Judith Cohen (“Cohen”) adequately provided this Court with the introduction to the settlement and a detailed background to the case, Objectors Sammy Rodgers (“Rodgers”) and Alvery Neace (“Neace”) will outline their position as to incentive awards and attorney fees without the need to provide the Court with redundant details.

A. The Neace and Rodgers Objections

In addition to other procedural objections, Neace and Rodgers objected to the settlement in this case because of a problem that is prevalent in most class actions: A large percentage of payments to claimants go uncashed or unclaimed. For example, in *Edwards v. Milk Producers*, Case 4:11-cv-04766 (N.D. Cal.), Entry 543-1, page 3, in announcing a second-round payout, the claims administrator declared, “Surprisingly, the take rate here … was only 32%.” In *Transpacific Passenger Air Transportation Antitrust*, 3:07cv05634 (N.D. Cal.), Entry 1347-1, page 2, the claims administrator advised that of 44,893 checks mailed, 16,216 were not cashed by the recipient. In *In re: Optical Disk Drive Products Antitrust*, 3:10-md-2143 (N.D. Cal.), Entry 3107, page 3, the claims administrator advised the Court that of 465,012 approved payments, 196,206 digital

1 payments went unclaimed and 46,176 digital payments were returned—over half.

2 These numbers represent a chronic problem in class action cases generally. Unclaimed
3 payments lead to a lack of confidence by claimants, a perception of a lack of fairness, additional
4 administrative work by claims administrators, and litigation when a claimant realizes their funds
5 were simply redistributed without notice—sometimes months or even years later.

6 For this reason, Rodgers and Neace objected to the fact that the website advertising the
7 settlement in this case made it difficult for a claimant to know how to change their physical address
8 or, in the case of digital payments, their email address. Certainly, in a case where claimants are
9 only receiving a small amount of money, they are not going to expend time searching for the claims
10 administrator's email or diving deep into the website searching for instructions.

11 In addition, realizing that people place mail forwarding instructions on their mail and
12 receive the check weeks or even a month or two later, Rodgers and Neace objected to the ninety
13 (90) day expiration on physical checks mailed.

14 Finally, in most litigations, when a payment is returned by the postal service, no attempt to
15 notify the claimant occurs. Objectors in this case challenged the wisdom of this. For whatever
16 reason, no attempt is made to contact a claimant even when the claims administrator has the
17 person's email address and could easily provide a notification and little administrative cost. For
18 example, in *Transpacific Passenger Air Transportation Antitrust*, 3:07cv05634 (N.D. Cal.), the
19 claims administrator made no effort to contact the over 25% of claimants whose checks were not
20 cashed or returned. In an example of lackadaisical administration in that, the claims administrator
21 did not notify a claimant having trouble receiving a check for over \$500,000 that the check was
22 returned a second time even though an email dialogue occurred with respect to the first missing
23 check. *Id.* at Entry 1353; *see also* Entry 1357.

24 Clearly, as the goal of class action cases is for the claimants to receive their payment,
25 improvement needs to occur in the industry.

26 **B. The Settlement of the Objections**

27 While this case remained on appeal to our Court of Appeals, the objectors and the parties
28 engaged in arm's length negotiations to attempt to improve the administration of the settlement.

1 Rodgers and Neace agreed to withdraw some other objections that may result in some improvement
 2 but would also dilute the payment and require extensive noticing, and the plaintiffs and defendant
 3 in this case agreed to better administration to help get funds into the hands of approved claimants.

4 First, the claims administrator agreed to modify the website and including an easily
 5 identifiable link for class members to update their address or their email to receive a digital
 6 payment. The claims administrator will also notify persons that submit a form that their
 7 modification was received.

8 Second, for returned checks, the claims administrator will run an address correction, check
 9 for forwarding addresses, and send the payments to the new address without the claimant having to
 10 do anything. Additionally, as many people are not able to be located through these databases, the
 11 claims administrator will send claimants whose check is returned an email telling them that they
 12 need to update their address.

13 Third, the claims administrator agreed to use an envelope when mailing checks, and not a
 14 cardboard tear off that is ordinarily discarded as advertising.

15 Forth, the time to cash the checks is being extended to 120 days instead of 90 which assists
 16 claimants whose check has been forwarded with plenty of time to cash the check.

17 Certainly, these modifications will provide benefit to class members and improve the
 18 administration of the settlement without much cost.

19 **C. Request for Fees and Incentive Payment**

20 The agreement provides that Rodgers and Neace may each apply to the Court for an objector
 21 service payment of \$1,000 and that their counsel may seek up to \$47,900 in attorney's fees and
 22 costs. These awards would not be taxed to the class members but would be paid from attorney fees
 23 already approved for class counsel.

24 **II. ARGUMENT**

25 **A. The Objections Provided a Valuable Service to the Class Action**

26 As this Court recognized in its indicative Order, the modification to the settlement and
 27 changes in administration benefit the class. *See* Entry 257, pages 6-7 ("The Rodgers/Neace
 28

1 settlement benefits the class by improving class members' ability to file claims and receive
 2 mailed checks. And the Cohen settlement benefits the class by narrowing the settlement's
 3 release").

4 These modifications made as a result of the Rodgers and Neace objections sound simple,
 5 but it needs to resonate with attorneys creating these types of settlements that they must be
 6 innovative and improve the process for claimants, not simply do what everyone has done in the
 7 past. The objectors certainly do not claim that the modifications will completely solve the
 8 problem of a significant amount of claimants not receiving their payment, but it is a starting point
 9 that can be applied.

10

11 **B. An Objector Service Award Should be Given to Rodgers and Neace**

12 Rodgers and Neace each seek \$1,000 as an objector incentive, or service, award. These
 13 suggestions to improve the administration of the payment system are not boilerplate objections.
 14 Rather, they are issues that the objectors themselves pointed out in a case that they believed
 15 contained the same deficiencies that are chronic in class actions.

16 Objector awards are appropriate, especially a low award such as that which Rodgers and Neace
 17 are requesting. *See In re Apple Inc. Sec. Litig.*, No. 5:06-CV-05208-JF HRL, 2011 WL 1877988, at *5
 18 (N.D. Cal. May 17, 2011) (awarding \$1,000); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766,
 19 817 (N.D. Ohio 2010), *on reconsideration in part* (July 21, 2010).

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21 In *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 743 (7th Cir. 2011), the Seventh
 22 Circuit Court of Appeals noted the important role played by "interlopers who oppose a proposed
 23 settlement . . . in preventing cozy deals that favor class lawyers and defendants at the expense of
 24 class members").

25 This Court in *Roe v. SFBSC Management*, 2022 WL 17330847, *18 (Nov. 29, 2022) approved
 26 objector service awards of \$5,000 to each objector but found that requests for more than that amount
 27 appeared unjustified. In this case, the objectors themselves are only requesting a nominal \$1,000 each
 28 as an award for improving the administration of the settlement. This amount appears fair considering

1 that the objectors themselves put forth the ideas to make the administration of the case better and
 2 dedicated energy and time discussing this case with counsel and placing their name on the line.

3 Therefore, this Court should award Rodgers and Neace the \$1,000 objector incentive award.

4 **C. Attorney Fees Should be Awarded for the Objections of Rodgers and Neace on
 5 a Lodestar Basis**

6 This Court's familiarity with the correct standards in awarding attorney fees to objectors is
 7 outlined in *Roe v. SFBSC Management*, 2022 WL 17330847, *17-18 (Nov. 29, 2022). Moreover,
 8 counsel for Objector Cohen provided ample citation to authority with respect to the standards.
 9 Therefore, Rodgers and Neace will not provide much repetitive discussion in this area.

10 In this case, however, the benefit to the approved claimants will not come in the form of
 11 additional money, but in the ability to receive the funds and modify their address or digital payment
 12 email easily and without discouragement. The amount of people using the change of address form
 13 or receiving money after notice that their check was returned is impossible to quantify at this
 14 juncture. Therefore, this Court should apply a lodestar as to counsel fees.

15 In "cases involving successful objections to a settlement" in which "the benefit to the class
 16 is not easily quantifiable[.]" "[t]he lodestar method is understandably used[.]" *In re Easysaver
 17 Rewards Litig.*, No. 09-CV-02094-BAS-WVG, 2021 WL 230013 at *3 (S.D. Cal. 2021), *citing In
 18 re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420-YGR (DMR), 2020 WL 7261313, at
 19 *1 (N.D. Cal. Dec. 10, 2020) (awarding \$250,000 in fees where objector's complaints led to a shift
 20 in the distribution of the settlement funds from one segment of the class to another); *Marshall v.
 21 Northrop Grumman Corp.*, No. 2:16-cv-06794-AB-JCX, 2020 WL 5668963, at *4 (C.D. Cal. Sept.
 22 18, 2020) (awarding \$48,900 in fees where objectors convinced the court to deny initial approval
 23 of the settlement, which led to an amended settlement agreement that included a narrower release
 24 of claims)).

25 In this case, it appears clear that the modifications to the administration of the case provided
 26 a stepping stone for class action attorneys to take a look at their website and make things easier for
 27 claimants. The constructive criticism provided by the objectors and their counsel will enable future
 28 claims administrators to take a hard look at methods to improve results.

1 Therefore, awarding lodestar-based attorney fees to counsel for Rodgers and Neace appears
 2 an appropriate result.

3 **D. The Requested Attorney Fees are Reasonable**

4 In this case, counsel for Objectors Rodgers and Neace is requesting less than \$600.00 per
 5 hour as a lodestar amount. It is less than \$600.00 because counsel agreed to cap the award at
 6 \$47,900 in fees and costs. Counsel spent more than eighty (80) hours preparing and submitting the
 7 objections and preparing the appeal.

8 \$600 per hour represents a fair rate for an attorney such as the undersigned who has
 9 practiced law since 1979 and federal law since 1985, maintaining considerable experience in
 10 consumer law. *See* Declaration of J. Allen Roth. Perhaps the best analysis of attorney fees can be
 11 found in the case of *Roe v. SFBSC Management, LLC*, 3:14-cv-03616-LB, Entry 270-2, pages 27-
 12 49 showing average hourly rates between \$800 and \$1200 of a senior attorney with nearly forty
 13 (40) years of practice. Therefore, the requested fees from counsel appear fair and appropriate in
 14 this case.

15 It is important to note that Class Counsel agreed that the funds to pay any approved award
 16 will come from attorney fees already approved by this Court. This is as it should be. It is
 17 unfortunate that the issues needed to be pursued on appeal and time expended preparing a brief in
 18 the appeals court. However, the objectors in this case were required to begin preparing their briefs
 19 because of deadlines imposed. Indeed, two extensions for brief filing were obtained prior to the
 20 settlement and filing additional extensions would have stretched the limits. As explained in the
 21 Declaration of J. Allen Roth, as soon as settlement negotiations reached a point where it appeared
 22 possible to improve the administration of the class action, counsel stopped working on the brief
 23 preparation.

24 **E. The Expenses are Reasonable**

25 Part of the \$47,900 includes the appeal filing fee of \$505. *Harris v. Marhoefer*, 24 F.3d 16,
 26 20 (9th Cir. 1994) (attorneys may recover reasonable expenses that would typically be billed to
 27 paying clients in non-contingency matters). This is the only expense counsel is billing for even
 28 though he incurred various PACER charges and other costs.

III. CONCLUSION

For the reasons discussed above, the Court should approve Sammy Rodgers and Alvery Neace's request for an incentive payment of \$1,000 each and for their attorneys' fees and expenses of \$47,900.

Dated: December 28, 2022.

Respectfully submitted,

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